

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Tele-Communications, Inc.)
)
Transferor,)
)
AT&T Corp.)
)
Transferee,)
)
Application for Authority)
to Transfer Control)
_____)

CS Docket No. 98-178

COMMENTS OF SPRINT CORPORATION

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SUMMARY

The public interest in ensuring that competition is not harmed by AT&T's acquisition of TCI requires the imposition of at least three conditions. First, TCI's interest in Sprint PCS must be disposed of in an orderly manner that does not adversely affect the market value of Sprint PCS' tracking stock or Sprint's ability to raise equity capital. The Applicants admit that the proposed transaction creates a dangerous opportunity for AT&T to competitively harm Sprint and PCS competition. This is so because after completion of the restructuring of Sprint PCS' operations (under which Sprint will acquire control of Sprint PCS) TCI will hold approximately 23% of Sprint PCS' tracking stock. If AT&T/TCI seeks to dispose of TCI's shares in a short period following the restructuring, the amount of stock being offered in the marketplace would significantly increase and this, in turn, would impair Sprint's ability to issue new PCS stock as a source of capital for its buildout of PCS. In order to prevent such impairment, approval of the proposed transaction must include the condition that TCI's interest in Sprint PCS be placed in the control of an independent trustee to effect an orderly disposition of TCI's stock in Sprint PCS.

Second, AT&T must provide reasonable and non-discriminatory access at reasonable points of interconnection, in accordance with reasonable and non-discriminatory network standards, to the

cable facilities it acquires or utilizes to provide its own common carrier services. With its acquisition of TCI's cable facilities, AT&T will re-establish itself as a vertically-integrated entity capable of providing, over its own facilities, not only long distance service but also, the origination and termination of such service to mass market customers. AT&T's smaller rivals will continue to be dependent upon the overpriced exchange access service provided by the near-monopoly ILECs. Even if AT&T provides some limited access competition, AT&T may well decide to forego profit optimization in favor of raising the cost of such rivals in the long distance market and thereby harm competition. An even more important problem is that where a subscriber takes local service from AT&T, there is no practical alternative except to use the loop facilities of AT&T to originate and terminate long distance calls placed by that subscriber. Denial of access to such facilities would seriously degrade a competitor's long distance service and adversely affect competition.

Third, consistent with Commission precedent and antitrust law, AT&T must be prohibited from tying TCI's cable service with AT&T's long distance and other competitive services.

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Public Notice DA 98-1969 issued September 29, 1998, in the above-referenced docket, hereby respectfully submits its comments on the above-captioned Application by AT&T and Tele-Communications, Inc. ("TCI") seeking the consent of the Commission for AT&T's acquisition of TCI. As set forth below, the Commission cannot find that the proposed acquisition is in the public interest unless it imposes the following three conditions. First, the Commission must ensure that TCI's interest in Sprint's PCS Operating Group ("Sprint PCS") be disposed of in an orderly manner that does not adversely affect the market value of Sprint PCS' tracking stock or Sprint's ability to raise equity capital. Second, the Commission must require that AT&T provide reasonable

and non-discriminatory access at reasonable points of interconnection, in accordance with reasonable and non-discriminatory network standards, to the cable facilities acquired or utilized by AT&T to provide its own common carrier services. Third, the Commission must prohibit AT&T from tying TCI's cable service with AT&T's long distance and other competitive services. In support thereof, Sprint states as follows.

I. PREVIOUS COMMISSION PRECEDENT CONFIRM THE COMMISSION'S AUTHORITY TO CONDITION ITS APPROVAL OF PROPOSED ACQUISITIONS BY CARRIERS TO ENSURE THAT THE ACT'S PUBLIC INTEREST REQUIREMENTS ARE SERVED.

As the Commission has repeatedly explained, it can only approve the transfer of control of licenses and authorizations from one carrier to another upon a demonstration by the applicants that such transfer meets the public interest standard set forth in Sections 214 and 310(d) of the Act, 47 U.S.C. §214, 310(d). See, e.g., *WorldCom/MCI Merger, Memorandum Opinion and Order*, FCC 98-225 (released September 14, 1998) at ¶¶8-10; *AT&T/Teleport Merger, Memorandum Opinion and Order*, FCC 98-169 (released July 23, 1998) at ¶11; *BT/MCI Merger*, 12 FCC Rcd 15351, 15364 (¶28), 1997; *Nynex/Bell Atlantic Merger*, 12 FCC Rcd 19985, 20001 (¶29), 1997. The public interest standard is "a flexible one that encompasses the broad aims of the Communications Act." *AT&T/Teleport Merger* at ¶11 (internal

quotation marks omitted). Thus, it requires that the Commission analyze, *inter alia*, whether a proposed acquisition will be consistent with Congress' "pro-competitive and de-regulatory national policy framework designed to ... open[] all telecommunications markets to competition," *WorldCom/MCI Merger* at ¶9 (internal quotation marks and footnotes omitted); whether a proposed acquisition will "promot[e] the competition policies of the Sherman and Clayton Acts," *AT&T/Teleport Merger* at ¶11; and whether a proposed acquisition will "enhanc[e] access to advanced telecommunications and information services ... in all regions of the Nation." *Id.* (internal quotation marks and footnotes omitted). Such analysis may "include an assessment of whether the merger will affect the quality of telecommunications services provided to consumers or will result in the provision of new or additional services to consumers." It may also include "the trends within, and the needs of, the telecommunications industry, the factors that influenced Congress to enact specific provisions of the Communications Act, and the nature, complexity and rapidity of change in the telecommunications industry." *WorldCom/MCI Merger* at ¶9. In all cases, the Commission has the authority, under Section 214(c) and Section 303(r) of the Act, to "attach conditions to the approval of a transfer of licenses," if necessary "to ensure

that the public interest is served by the transaction." *Id.* at ¶10.

II. THE COMMISSION MUST CONDITION AT&T'S PROPOSED ACQUISITION OF TCI TO ELIMINATE AT&T'S ADMITTED CAPABILITY TO ADVERSELY AFFECT SPRINT'S ABILITY TO RAISE CAPITAL FOR SPRINT'S PCS OPERATIONS.

The Applicants fundamentally admit that the proposed transaction creates an unusual but dangerous opportunity for AT&T to competitively harm Sprint by adversely impacting its ability to raise capital for the buildout of its PCS network at a crucial time in the evolution of wireless telephone competition. Application at 11, n. 17. This opportunity must be eliminated by the creation of a trust that will provide for the orderly disposition of TCI's interest in Sprint PCS stock. The creation of such a trust must be a condition of approving the proposed merger.¹

As the Commission is aware, in 1994, Sprint partnered with TCI, Comcast and Cox (collectively "the cable partners") to provide PCS services throughout the United States. The partnership agreed that the service would be sold using the "Sprint" brand name. As the Commission is also aware, Sprint and the cable partners, including TCI, recently entered into a

¹ During the Commission's October 22, 1998 En Banc Mergers Hearing, see *Public Notice*, DA 98-2045, released October 9, 1998, TCI expressed a willingness to agree to the creation of such a trust. See, discussion below at p. 7.

Restructuring and Merger Agreement ("Agreement").² In the most basic terms, this Agreement provides for Sprint to acquire the cable partners' interests in Sprint PCS in return for Sprint's issuance to the cable partners shares of a newly-created class of Sprint common stock that will track Sprint's PCS operations. Consequently, once the restructuring is completed (which is expected to occur by the end of November), Sprint will own and control Sprint PCS in its entirety and the cable partners will be financial investors in Sprint. Specifically, the cable partners will hold just under 47% of the equity in the Sprint PCS group, and will have significant registration rights which give each cable partner a selling priority with respect to the Sprint PCS stock during a twelve-month period beginning 180 to 210 days after the restructuring is completed. TCI will hold approximately 23% of the stock that will track Sprint's PCS operations.³ This amount of stock will represent over one-half of the public float and over 100 times the estimated average daily trading volume of the Sprint PCS stock.⁴ Sprint agreed to

² See, *Public Notice*, LB-98-65, released August 31, 1998.

³ The cable partners will receive a total of 195.1 million shares of PCS stock under the Agreement; TCI will receive 98.6 million of these shares.

⁴ Under the Agreement, Sprint will conduct a tax-free exchange of each share of Sprint's existing common stock for one-half share of PCS stock and one share of another tracking stock (that will track Sprint's wireline and other operations). Sprint may also conduct an underwritten public offering of the PCS stock at a later date. Assuming both occur, approximately 196.1 million

Footnote continues next page.

these terms based on the economic incentives of the cable partners that existed at the time of the Agreement -- namely, to maximize the value of the Sprint PCS stock. Those incentives may change if AT&T acquires TCI.

Sprint is actively engaged in the process of building out its PCS network -- a demanding effort that will continue over several years and require significant capital resources. Consequently, it is imperative that, going forward, Sprint has access to public equity markets in order to gain those resources. Once again, at the time the restructuring plan was adopted, the existing cable partners had no incentive to deny Sprint that access for anticompetitive purposes.

In its filing in this docket, the Applicants acknowledge that the "sale of its PCS stock in a short period following the restructuring would greatly increase the amount of stock being offered in the marketplace and could create an amount of available stock in the public market that would impair Sprint's own ability to issue new PCS stock as a source of capital." Application at 11, n.17. They also acknowledge that "Sprint is seeking to obtain large amounts of new capital to complete its

shares of PCS stock will be publicly traded. If a public offering is not done, approximately 171.9 million shares of PCS stock will be publicly traded. See Table I for an explanation of float. Sprint's investment bankers estimate that 980,000 shares of Sprint PCS tracking stock will be traded daily. See Table II attached.

nationwide PCS network" and impairing "Sprint's ability to raise the capital necessary to buildout the PCS network ... necessarily would undermine the public policy of promoting competition in the mobile telecommunications marketplace." *Id.* at 1, n. 17 and 30, n. 59. Sprint appreciates the forthright manner in which AT&T and TCI have acknowledged the competitive issues raised by AT&T's acquisition of Sprint PCS stock.

The Applicants, however, have tried to assuage any concern the Commission may have by maintaining that stock will reside in the Liberty Media Group. While the stated intention is to operate Liberty "separately" from AT&T's wireless unit, the fact remains that Liberty will be a 100%-owned subsidiary of AT&T, Liberty's performance will be tracked by a class or series of AT&T common stock, and AT&T will elect the directors to sit on Liberty's board of directors, at least one of whom will also serve on the AT&T board. Finally, the Chairman of Liberty will also be AT&T's largest individual shareholder and will sit on its board of directors. Under these circumstances, the fact that the Sprint PCS stock will reside in the Liberty Media Group does nothing to mitigate, let alone remedy, the competitive threat posed by the proposed merger. Indeed, during the Commission's En Banc Hearings on Telecommunications Mergers, TCI acknowledged the appropriateness of putting its Sprint PCS stock in a trust. TCI's Chief Operating Officer stated: "We fully

anticipate that our ownership in Sprint must be distinguished [through] a voting trust -- or disposition [over] a respectful period of time."

Thus, as TCI acknowledges, approval of the proposed transaction must include the condition that TCI's interest in Sprint PCS be placed in a trust. An independent trustee not influenced by AT&T's incentives to harm Sprint should then effect an orderly disposition of the PCS stock.

Under Sprint's proposal here, all of TCI's present and future interest in Sprint PCS, including the PCS stock, would be placed in a trust immediately upon the closing of the AT&T/TCI transaction. The trustee, who, as stated, would be independent of AT&T's incentives to competitively harm Sprint, must make an orderly disposition of the Sprint PCS interest within ten years. An "orderly disposition" in this case means a series of dispositions (1) designed to maximize the total value received for all of the Sprint PCS interest held by AT&T/TCI and made in a manner that does not injure Sprint and (2) not exceeding more than 10% of the public float of Sprint PCS stock in a registered offering or otherwise in any consecutive 12-month period. This duty to maximize return aligns the trustee's duties with the incentives in place when Sprint and the then-independent TCI agreed to the PCS restructuring.

In order to neutralize any influence of the trustee on the control of Sprint, the trustee should be required to vote the shares of the Sprint PCS stock in the trust pro rata in accordance with the aggregate vote of the other holders of shares of Sprint PCS stock.⁵ Also, AT&T and the trustee each must be required to become parties to a Standstill Agreement substantially in the form of the Standstill Agreement, dated May 26, 1998, between Sprint and TCI, which protects against certain acquisitions of additional Sprint stock. Finally, the trust agreement should not negate the parties' obligations to comply with the terms and conditions of existing agreements between Sprint and TCI.

The remedy proposed by Sprint rightly ensures the incentives in place when the Agreement was reached will continue if AT&T acquires TCI. The proposed remedy protects against the potential for competitive harm while ensuring that AT&T will receive exactly what TCI bargained for in the PCS restructuring:

⁵ The trustee should be prohibited from knowingly selling any portion of the Sprint PCS interest to a major telecommunications competitor without the prior consent of the Commission. Also, all sales made by the trustee must be made in accordance with the terms and conditions of the Registration Rights Agreement which Sprint and TCI have negotiated and which will be executed upon the consummation of the PCS restructuring, including, without limitation, the restriction on the sale of any portion of the Sprint PCS interest during the period immediately after the completion of a public offering of the Sprint PCS stock.

the maximum financial value for its interest in Sprint PCS.⁶

III. THE VERTICAL INTEGRATION PROPOSED BY AT&T PRESENTS A DANGER TO LONG DISTANCE COMPETITION.

According to Applicants, AT&T's acquisition of TCI "will promote the primary goals of Telecommunications Act of 1996, by fostering facilities-based competition for the delivery of two-way local residential voice communications and advanced broadband services." *Id.* at 39. Sprint agrees that the promise of facilities-based competition to the ILECs in the mass residential services market is a substantial public interest benefit. Nevertheless, at the same time, it is apparent that this benefit does not justify unconditional approval of the transaction as the Applicants request. On the contrary, AT&T's proposed acquisition of TCI may have serious anticompetitive effects and, therefore, fail to serve the public interest unless properly conditioned.

The Commission should not underestimate the importance of AT&T's acquisition of TCI and the capacity of such acquisition to alter the existing competitive landscape for mass market telecommunications services. At the present time, notwithstanding the passage of almost three years since the

⁶ Adopting Sprint's proposal here will resolve the horizontal integration problem created by the fact that AT&T and TCI (through its ownership of Sprint PCS) are direct and significant competitors in the market for wireless mobile telephony.

enactment of the Telecommunications Act of 1996, exchange access for long distance telecommunications services remains a virtual monopoly of the RBOCs and other ILECs. As a result of this monopoly and historical patterns of cross-subsidization, access prices available to long distance carriers remain substantially above costs. See, e.g., *Access Charge Reform*, 12 FCC Rcd 15982, 16001 (1997) (subsequent history omitted); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 75499, 16012, 16026-27 (1996) (subsequent history omitted). Approximately 40 percent of interstate domestic revenues continues to be paid to local carriers for the origination and termination of service.⁷

Cable facilities, however, provide a second "wire" which enters, or at least passes, the majority of residential households. If properly reconfigured, cable facilities provide a possible alternative (perhaps even a superior alternative for data use) for the provision of local and exchange access services. Indeed, AT&T concedes that "cable companies offer the best hope of providing a competitive alternative to the incumbent LECs' bottleneck facilities for a broad number of residential customers." See, AT&T's Reply Comments in CC Docket

⁷ See "Telecommunications Industry Revenue: 1997," Industry Analysis Division (Jim Lande and Kate Rangos) October 1998, Table 5.

No. 98-146 (*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*) at 15.

AT&T's acquisition of TCI will enable it to re-establish itself -- less than fifteen years after divestiture -- as a vertically-integrated entity capable of providing, over its own facilities, not only long distance service but also, uniquely, the origination and termination of such service to mass market customers. In contrast, AT&T's smaller rivals will continue to be dependent upon the overpriced exchange access service provided by local carriers, or, after the acquisition, by AT&T itself, under such terms and conditions as AT&T may see fit to apply.

Since cable is primarily a residential service, the facilities that AT&T will acquire by its purchase of TCI would, in contrast to facilities it acquired by its purchase of Teleport, enable AT&T to provide local service in the mass residential market. And, other than the ILECs and cable facilities controlled by AT&T, there are no alternative sources of supply for access likely to be available to AT&T's rivals

seeking to provide downstream services in this market.⁸ Thus, the anticompetitive risks of the proposed vertical integration here are significantly greater than the adverse competitive effects that attended AT&T's acquisition of Teleport.

In its decision approving AT&T's acquisition of Teleport, the Commission determined that Teleport provided originating access primarily to large business customers in urban areas; that there were actual and potential competing access providers in this segment of the market; and that consequently, "the ability or incentives of the merged firm to affect competition adversely in any downstream end-user market" was significantly reduced. *AT&T/Teleport Merger* at ¶42. Even accepting, *arguendo*, that the Commission correctly concluded that the CLEC activities in the large business market would constrain the ability of a merged AT&T/Teleport to "adversely affect competition" in the downstream large business market, there is no claim that the same conclusion would apply to the provision

⁸ In its *Nynex/Bell Atlantic Merger* decision, the Commission identified and aggregated customers with similar demand patterns within each product market, e.g., long distance. Specifically, the Commission identified three customer groups "as having similar patterns of demand" -- residential/small business customers, medium-sized business users and large business/government users -- and went on to explain that "[e]ach of these customer groups exhibits distinct buying patterns." It then focused its analysis on the residential/small business customer group because the greatest competitive concerns arose in that market segment. 12 FCC Rcd at 20016 (¶53). Likewise the Commission's competitive analysis of the instant transaction should focus on residential customers, since Applicants claim that the deal is justified on grounds of breaking the ILECs control of "last-mile" facilities to residential customers.

of access services in the mass residential market. Quite the contrary, the Commission found that "[a]lthough competitors have entered a few discrete local areas, incumbent LECs are the sole actual providers of local exchange and exchange access services to the vast majority of residential and small business customers in most areas of the United States." *Id.* at ¶24. Clearly, AT&T's ability to adversely affect competition in the downstream residential mass market would not be constrained once AT&T acquired TCI's cable facilities.

Properly understood, AT&T's acquisition of TCI marks a fundamental change in the way long distance access will become available and in the way in which AT&T and its competitors will continue to compete. AT&T's acquisition of TCI vertically integrates the nation's largest long distance carrier (by a substantial margin) with a cable service provider that serves approximately 30 million homes and has access to another 3 million households in its service area that do not subscribe to cable service.⁹ And, this is only the beginning. As The Wall Street Journal reported last Thursday, AT&T's Chairman has vowed "to cement deals with cable partners to extend AT&T's reach to 60% of U.S. homes." *Time Warner, AT&T Discuss Phone Venture,*

⁹ TCI serves 14.4 million households directly and 16 million households indirectly through its 33% investment in Cable Vision Systems Corp.

October 22, 1998, at B1, B16. To this end, as the article also reported, AT&T and Time Warner "are negotiating a sweeping deal that would give the long distance giant access to Time Warner's vast network of cable systems...." *Id.* at B1.¹⁰

There can be no doubt that the massive vertical integration undertaken by AT&T through an expenditure of resources unavailable to its smaller competitors will pose a serious threat to long distance competition. As noted, the only alternative access service for residential users is that provided by the ILECs, and this service is priced substantially above costs. AT&T's unique ability to obtain access through the cable facilities it acquires from TCI, or through arrangements with other cable companies, will provide AT&T with alternatives to BOC access services which would be unavailable to its competitors on the same rates, terms and conditions.

Even if some limited access service alternatives develops through AT&T's own infrastructure provider, AT&T may well decide to forego profit optimization from the sale of access in favor of raising the cost of such access to its long distance competitors. In other words, it may be economically reasonable

¹⁰ The relevant geographic market for exchange access service is obviously limited by the boundaries of the exchange. Sprint simply notes AT&T's broader plans as evidence of the enormous scope of the problem here.

for AT&T to decide to simply price at BOC levels (even if this does not maximize profits for its access service) in order to leverage whatever power it gains in the access market to raise the costs to rivals in the larger long distance market.

To make matters worse, as AT&T shifts its own access traffic off the ILECs' local networks and onto its own cable loop plant facilities, the ILECs will lose the revenues associated with that traffic and will, in all likelihood, seek to make up for such loss by raising prices to their remaining customers. The fact that price caps exists for LEC access services does not rule out such a possibility.¹¹

Perhaps an even more important problem in the long run stems from the fact that AT&T's provision of local service can be expected to increase over time and that AT&T (as any other local carrier) will have "monopoly" control over the provision of access to its own local subscribers. Even if there are numerous access providers serving a given market, access to a particular customer can only be obtained through that customer's local carrier. Consequently, where a subscriber takes local

¹¹ To the extent price cap LECs have headroom (that is, their API is less than their PCI), they will be able to increase their rates without exceeding their PCI. Furthermore, as AT&T shifts its access demand to TCI from the LECs, the LECs' revenues will, all other things being equal, decline. The impact of fixed exogenous cost changes (e.g., USF contributions) will be even greater because they are applied over a smaller revenue base.

service from AT&T, there is no practical alternative except to use the loop facilities of AT&T to originate and terminate long distance calls placed by that subscriber.

The problem which arises from such "monopoly" control over access was elucidated by AT&T in a Petition For Declaratory Ruling filed just last Friday, October 23, 1998.¹² AT&T pointed out that, although most CLECs were seeking to compete in the provision of access service by charging rates that were significantly lower than those of the ILECs, a substantial number of CLECs have instead adopted business plans under which they impose "switched access charges (particularly, though not exclusively, for terminating access) that are even higher -- in some cases, by more than twenty times -- than those charged by its ILEC competitor in the same area in which the CLEC operates." Petition at 2. AT&T, therefore, requested the Commission declare that "interexchange carriers are not obligated to purchase tariffed switched service from CLECs." *Id.* at 10.

The relief sought by AT&T is perhaps an adequate solution where the CLEC provides service to relatively few customers. In such case, the long distance carrier, if it

¹² The petition is captioned "*In the Matter of Interexchange Carrier Purchases Of Switched Access Service Offered By Competitive Local Exchange Carriers.*"

cannot reach a satisfactory accommodation with the CLEC, has a realistic economic option of not interconnecting with the local subscriber at all. Although this degrades the long distance carrier's operations (primarily because it cannot provide ubiquitous termination to its other long distance subscribers), it also puts pressure on the CLEC (because the local customer may not be able to get access from any long distance carrier at the rates demanded by the CLEC).

But this "laissez-faire" approach is unlikely to be acceptable in the case of AT&T. AT&T's competitors would not have sufficient countervailing market power to ignore a demand by AT&T for access charges which are above those charged by the ILECs or which are substantially above costs. Over time, AT&T can be expected to attract far more local customers than the CLECs that are now "chiseling" by insisting upon vastly inflated access charges. The inability to interconnect with AT&T's local customers would, therefore, seriously degrade a competitor's long distance service. As AT&T's local operations grew, its long distance competitors' subscribers would become more and more aware -- and more and more dissatisfied -- by the failure of their own carriers to provide termination to AT&T's local residential subscribers. AT&T could then take

advantage of this situation by notifying its competitors' long distance subscribers that they could obtain ubiquitous termination and improve their service by switching to AT&T.

In short, AT&T's competitors will be presented with a Hobson's choice: they could either pay AT&T's above-cost access charges and thereby subsidize AT&T's operations against themselves in downstream markets or they could refuse to connect and thereby seriously degrade the long distance services they provide. Either way, long distance competition with AT&T will become increasingly problematic.

Sprint does not suggest that AT&T would necessarily follow a strategy of overcharging its competitors for access. Rather, Sprint's point here is simply that AT&T would have both the incentive and the ability to do so and that the Commission cannot ignore this problem.

As if to emphasize this point, one discordant note that has already arisen is reflected in AT&T's Reply Comments in CC Docket No. 98-146. There, AT&T strongly suggests that it will not use cable facilities to offer a competitive alternative to third parties to the exchange access being provided by the ILECs. AT&T disputes the argument advanced by various Internet Service Providers (ISPs), that because "[c]able operators possess ... 'last-mile' infrastructure," the Commission should require them

to "make such access available to unaffiliated ISPs on a reasonable and non-discriminatory basis." America Online Comments in CC Docket No. 98-146 at 9-10. See also Circuit City Comments in CC Docket No. 98-146 at 11-14; MindSpring Comments in CC Docket No. 98-146 at 17-24. According to AT&T, cable providers that "will be required to invest billions of dollars to upgrade their networks" should not have "to provide unbundled access to those upgraded facilities to third parties whose business plans did not include the development and deployment of advanced infrastructure." AT&T Reply Comments in CC Docket No. 98-146 at 15.

This hardly suggests an open approach by AT&T to the use of the cable facilities it is acquiring. Unfortunately, in some ways, it is reminiscent of the exclusionary arguments made by the RBOCs that they should not have to make their facilities available to their competitors.

In any event, whatever AT&T's intentions, the Commission cannot remain passive in the face of the incentives and the ability which AT&T has as a result of its cable acquisitions to discriminate against competitors and thereby raise its rivals' costs. The Commission has explained that in determining whether a vertical transaction is in the public interest, the Commission must examine whether the resulting vertical integration "will

increase the ability or incentives of the merged firm to affect competition adversely in any downstream market." *Id.* See also, *BT/MCI Merger*, 12 FCC Rcd at 15410 (¶156) ("In examining a vertical transaction, we focus upon whether the transaction either increases the incentives or the ability of the integrated firm to raise the costs of its rivals to the detriment of consumer welfare").

Thus, in order to ensure that the proposed transaction is in the public interest, the Commission must require that AT&T provide reasonable and non-discriminatory access at reasonable points of interconnection, in accordance with reasonable and non-discriminatory network standards, to the cable facilities acquired or utilized by AT&T to provide its own common carrier services.¹³ Such access must include the ability to create both voice and data quality and bandwidth-capable circuits or virtual circuits compatible with a circuit-switched network protocol or in a packet architecture.

IV. THE COMMISSION MUST PROHIBIT AT&T FROM BUNDLING TCI'S CABLE SERVICE WITH ITS PROVISION OF ITS LONG DISTANCE AND OTHER COMPETITIVE SERVICES.

Yet another danger to competition presented by AT&T's acquisition of TCI is the fact that AT&T will thereby acquire

¹³ Such interconnection would include individual, multiplexed and packet circuits or virtual circuits and data streams for use by common carriers.

TCI's monopoly in the provision of cable services. Thus, AT&T will have the ability to exploit its monopoly control over cable to force the cable subscriber to subscribe to AT&T's offerings in competitive markets, e.g., long distance service. Such tying arrangements have long been condemned under antitrust law as anticompetitive. See, e.g., *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 104 S.Ct. 1551 (1984); *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336, 1341 (9th Cir. 1984), cert. denied, 473 U.S. 908 (1984). This Commission's long-standing policies proscribing the bundling of competitive enhanced services and CPE with common carrier services is also based on the "concern that carriers could use such bundling in anticompetitive ways." See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, *Further Notice of Proposed Rulemaking*, FCC 98-258 (released October 9, 1998) at ¶2 and Commission decisions cited therein. Consistent with such precedent, the Commission must, as a condition of its approval of AT&T's acquisition of TCI, prohibit AT&T from tying TCI's monopoly cable service with AT&T's long distance and other competitive services.

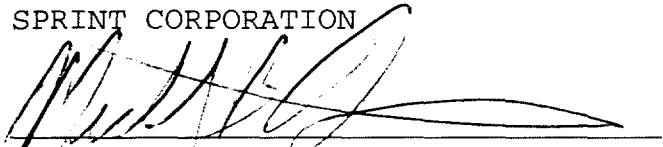
V. CONCLUSION.

Clearly, the public interest requires that the Commission's approval of AT&T's acquisition of TCI be properly conditioned to ensure that no untoward competitive effects result. In this

regard and as demonstrated above, such conditions should, at a minimum, include (1) a requirement that TCI's interest in Sprint PCS be disposed of in an orderly manner that does not adversely affect the market value of Sprint PCS' tracking stock or Sprint's ability to raise equity capital; (2) a requirement that AT&T provide reasonable and non-discriminatory access at reasonable points of interconnection, in accordance with reasonable and non-discriminatory network standards, to the cable facilities acquired or utilized by AT&T to provide its own common carrier services; and (3) a requirement that prohibits AT&T from tying TCI's cable service with AT&T's long distance and other competitive services.

Respectfully submitted,

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October 29, 1998

TABLE 1

AT&T Holdings Relative to Public Float

AT&T Holdings in PCS Stock	98,563,924
Total Publicly Traded PCS Stock ("Float")	196,134,106

AT&T Holdings as % of Float	50%
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Public Float Components:	<u>Shares</u>	<u>Basis</u>
Existing Sprint Shareholders (Excluding FT and DT)	171,920,269	Each existing Sprint shareholder (343.84MM shares excl. FT/DT) will receive half a share of PCS in the Recapitalization.
New Public Shareholders	24,213,837	\$525MM IPO of PCS Stock at estimated \$21.68 IPO price
Total Float	196,134,106	Cable Parents will initially receive 47% of the economics of the PCS Group. AT&T/TCI Shares represent approx. 50% of the Cable Parents' Holdings. After the Recapitalization and before the PCS IPO there will be 415.1MM PCS shares outstanding.

TABLE 2

AT&T Holdings Relative to Estimated Daily PCS Trading Volume

Estimated Daily Trading Volume of PCS Stock	980,671
Daily Trading Volume as % of Float	0.5% (a)

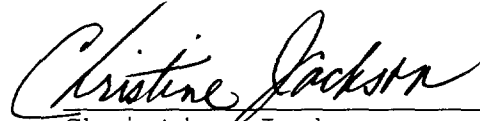
AT&T Holdings as Multiple of Daily Trading Volume	100.5 x
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Note (a):

<u>Comparable Company</u>	<u>Shares in millions</u>		<u>Daily Trading Volume as % of Float</u>
	<u>Float</u>	<u>Avg. Daily Volume</u>	
AT&T	1,806.2	5.4	0.3%
Sprint	343.5	0.9	0.3%
Air Touch	514.2	1.7	0.3%
WorldCom	1,038.5	11.1	1.1%
	Average		0.5%

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 29th day of October, 1998 to the parties on the attached list.


Christine Jackson

October 29, 1998

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